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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,390	08/28/2001	Shane Chen	BWD:7945.006	6029

7590

09/24/2003

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EXAMINER

VANAMAN, FRANK BENNETT

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 09/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/941,390

Applicant(s)

CHEN, SHANE

Examiner

Frank Vanaman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 42 and 43 is/are allowed.
- 6) ☒ Claim(s) 32-35 and 37-41 is/are rejected.
- 7) ☒ Claim(s) 36 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Status of Application

1. Applicant's amendments, filed 6/30/03 and 7/3/03 have been entered in the application. Claims 32-43 are pending, claims 1-31 all now being canceled.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the spring connected between the drive shaft and motor assembly (claim 41) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Claim Rejections - 35 USC § 112

3. Claim 41 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 41 refers to a connection of a spring between the drive shaft and the motor assembly, however, the specification as filed (note for example, at pages 8-9), as well as the drawings as filed, fail to describe how such a feature is made.

4. Claims 39 and 41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 39, it is not clear how a pivot pin can also include a spring, nor is it clear whether the element being recited as a pin can continue to be recited as a "pin" if it comprises a spring. In claim 41, the structural recitation of a spring connected between a motor assembly and a drive shaft is confusing, and the function of such a structure is not clear.

Claim Rejections 35 USC 103

5. The pertinent portions of 35 USC may be found in a previous office action.

6. Claims 32-34, 40 and 41 are rejected as being unpatentable over Selwyn (cited previously) in view of Patmont et al. (cited previously). Selwyn teaches a motorized scooter having a riding platform (1), a rear wheel (2) and a motor (5) connected to a steering shaft (3) including a handlebar (8) the motor arranged for driving a front wheel (4), and a battery being located in a case (7) which is mounted to the steering shaft,

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which would be inherently detachable through a reversal of the mounting process, in view of Selwyn's disclosure that the case is "mounted". The reference to Selwyn fails to teach the motor having a shaft which is resiliently engaged with the wheel, the motor assembly capable of sliding motion with respect to a portion of the shaft, and including a horizontal pin, with the resilient element being located below the pin, and being vertically oriented. Patmont et al. teaches a motor arrangement for powering a scooter, including a motor in a case (24), which is mounted to a frame portion (180) with a horizontal pivot pin (not referenced, connecting 182 and 24, figure 9B), and which is resiliently biased such that the motor shaft (25) engages the wheel periphery (22), under the action of a vertically oriented spring (27) the lower portion of which is located lower than the pivot pin, and where the abutting faces of the motor case mounting tab (not referenced, directly adjacent 182) and the frame mounting tab (182) may be slidably displaced in a rotary direction, to the breadth claimed, with respect to one another. It would have been obvious to one of ordinary skill in the art at the time of the invention to replace the gear train drive taught by Selwyn with the resiliently biased motor drive taught by Patmont et al. for the purpose of improving the reliability of the drive scheme of the scooter, for example to allow slip of the drive train should the wheels be forcibly stopped when the motor is not powered off. The references to Selwyn and Patmont et al. fail to teach the biasing element as being an elastic band. Elastic bands are well known resilient elements which are capable of performing as a spring device and but, in view of generally being non-metallic, are well adapted to environments which may cause corrosion, such as damp situations, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to replace the spring taught by Patmont et al. as applied to the scooter power train of Selwyn with an elastic band for the purpose of extending the outdoor life of the motor mount.

7. Claims 35, 37 and 38 are rejected as being unpatentable over Selwyn in view of Patmont et al. and Olsen (cited previously). The references of Selwyn and Patmont et al. are discussed above and fail to teach the coupling of the motor assembly to the steering shaft and handle bar as being by a bracket which is mounted by a clamp.

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Olsen teaches a commonly known mount for an element (50) wherein the element is provided with a bearing aperture which engages a pin (60) mounted to a bracket portion of a clamp (70) on a scooter (80). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the case taught by Patmont with a bearing aperture and the scooter with a pin, as taught by the mounting scheme of Olsen, for the purpose of allowing easy assembly/disassembly of the case to the scooter. Please note that by the structure inherent in elements of the general class known as clamps, such devices are removable and repositionable, and as such, it is deemed inherent that the clamp taught by Olsen is both (a) removable and (b) repositionable, to the breadth these limitations are currently claimed.

Allowable Subject Matter

8. Claims 42 and 43 are allowed.
9. Claim 36 is objected to as being dependent from a rejected base claim, but would be allowable is re-written in independent form to include all the limitations of the base claim and any intervening claim.

Claims not Rejected over the Prior Art

10. Claim 39 is not rejected as being unpatentable over or anticipated by the prior art of record, but is not in condition for allowance in view of the confusing nature of the claim recitation as set forth in the rejections based upon 35 USC 112, second paragraph, set forth above.

Response to comments

11. Applicant's comments are noted. As regards the detachability of the motor assembly of Selwyn, applicant is reminded that Selwyn specifically refers to the motor assembly as having been mounted, and thus may be removed by a reversal of the mounting procedure. As regards Patmont et al.'s bushing to which applicant refers, note the presence of the hex head (i.e., bolt head) for allowing the attachment of a tool such as a wrench, for removal of the fastener. As regards applicant's characterization of the examiner's previous words that the phantom illustration in Selwyn shows that the motor may be detachable, the examiner has found no evidence of such a statement in the office action, and requests that applicant point out where the examiner has stated that

the evidence of detachability resides in that portion of Selwyn's illustration, for the purpose of clarification of the prosecution history. Note that the vertical *position* of the motor with respect to the wheel may be changed, to the breadth previously claimed, by a pivoting of the front steering shaft and handlebar of Selwyn. Applicant's comments concerning the motor shaft of the scooter of Selwyn "automatically engaging the front wheel" when the handlebar and steering shaft are raised are misleading, in that there is no "automatic engagement" whatsoever: the front wheel moves along with the rest of the handlebar and steering shaft. Note that the wheel (4) in the folded position is shown in phantom above and slightly behind the position of the wheel in the riding position. Applicant is hereby explicitly requested to explain which portion of the Selwyn reference describes the "automatic engagement" that applicant has attributed to the reference in the remarks, in order to clarify the record. Applicant's comments concerning Selwyn's teachings as being the only teachings in the prior art of a front mounted motor are confusing in view of the citations of references such as Gibson and Eichholz (both cited previously). Applicant's comments concerning the reference to Olsen, as regards elements in Olsen which are not currently relied upon, are noted, but it has not been suggested that these features be incorporated.

As regards claims currently rejected under 35 USC §112, second paragraph, please note that rejections under 35 USC §102 and 103 should not be based upon considerable speculation as to the meaning of the terms employed and assumptions as to the scope of the claims when the claims are not definite. See *In re Steele* 305 F.2d 859, 862, 134 USPQ 292, 295 (CCPA 1962). When no reasonably definite meaning can be ascribed to certain terms in a claim, the subject matter does not become anticipated or obvious, but rather the claim becomes indefinite. See *In re Wilson* 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). As such the currently pending claims may be subject to prior art rejections not set forth herein upon the clarification of the claim language.

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Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 703-308-0424. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is 703-308-1113.

As of May 1, 2003, any response to this action should be mailed to:

Mail Stop _____
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450,

Or faxed to one of the following fax servers:

Regular Communications/Amendments: 703-872-9326
After Final Amendments: 703-872-9327
Customer Service Communications: 703-872-9325

F. VANAMAN
Primary Examiner
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9/22/03